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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

WILLIAM HENDRICKS, Plaintiff and Appellant, v. CITY OF REDONDO BEACH et al., Defendants and Respondents.	B227310 (Los Angeles County Super. Ct. No. YC059311)

APPEAL from a judgment of the Superior Court of Los Angeles County, Cary H. Nishimoto, Judge. Affirmed.

Corey W. Glave for Plaintiff and Appellant.

Carico Johnson Toomey, Philip A. Toomey and William G. Benz for Defendants and Respondents.

INTRODUCTION

Plaintiff William Hendricks (Hendricks) appeals from a judgment entered in favor of defendants City of Redondo Beach (City), the Redondo Beach Police Department (Department), Chief of Police W. Joseph Leonardi (Leonardi), and City Manager William Workman. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. *Underlying Internal Affairs Investigations*

1. Parking Card Investigation

On March 15, 2007, David Biggs (Biggs), the City's assistant manager received an email from Mary Anne Campeau (Campeau), the City's Harbor Facilities Manager. The email advised that on March 3, 2007, an unidentified police officer dressed in civilian clothing used a parking access card assigned to the Department to let cars out of the Pier Plaza parking structure without paying for parking. Biggs forwarded Campeau's email to Leonardi. Leonardi replied to Biggs's email, informing him that Sergeant Richard Kochheim (Kochheim) would be conducting an internal affairs investigation. Leonardi also asked Campeau to retain the surveillance videos of the incident.

Leonardi forwarded Biggs's email to Kochheim and instructed Kochheim to commence an internal affairs investigation, to obtain the surveillance videos in order to identify the officer involved and to charge the offending officer with improper use of equipment, petty theft and any other applicable charges. Despite the reference to "petty theft" in Leonardi's email, Kochheim did not commence an investigation against Hendricks for petty theft or any other crime. Kochheim did not construe Leonardi's comments as a directive to commence an investigation into whether a crime occurred. Kochheim also did not use Leonardi's email to determine the disciplinary charges to bring. Rather, the charges were based upon his independent review of the information gathered during the scope of his investigation.

Campeau provided Kochheim with a CD, containing surveillance footage of the parking structure between 20:11 and 20:13 (20:11 video). Campeau advised that there was more to the incident than what was depicted on the video and provided Kochheim with a computer printout documenting the times the Department's parking pass had been used or attempted to be used on March 3, 2007.

Based upon an interview with Sergeant John Wisser (Wisser) and Kochheim's understanding that, on March 3, 2007, Hendricks had a wedding reception near the parking structure, Kochheim focused his investigation on Hendricks. The scope of the charges included a violation of Redondo Beach Civil Service Rule XVI, section 2, subsection M, entitled "Misuse, theft, damage or destruction of City Property." Kochheim included this violation because of the subsection's use of the word "misuse." He quoted the subsection M in its entirety in the charges.

2. First Interview

On April 5, 2007, Kochheim placed a Notice of First Interview in Hendricks's work mailbox. This notice stated that Hendricks was under investigation for misusing City equipment—i.e., the Department's parking access card—on March 3, 2007 at the Pier Plaza Parking structure and that Kochheim was in charge of the interview.

The first interview commenced at 10:49 a.m. on April 10, 2007. Hendricks appeared with an employee representative, who was present at all times during the interview. At the beginning of the interview, Kochheim read Hendricks his *Miranda*[1] and *Lybarger*[2] rights and informed him that the allegation against him stemmed from the possible misuse of the Department's Pier Plaza parking access card on March 3, 2007 at approximately 20:15 hours. Kochheim showed Hendricks the 20:11 video and inquired about an altercation between a female guest at Hendricks's wedding reception and the

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[1] *Miranda v. Arizona* (1966) 384 U.S. 436 [86 S.Ct. 1602, 16 L.Ed.2d 694].

[2] *Lybarger v. City of Los Angeles* (1985) 40 Cal.3d 822.

parking attendants and a possible altercation between Hendricks and the parking attendants. Hendricks stated the altercations occurred prior to 20:15 hours, and he denied being in possession of the Department's parking access card at any time on March 3, 2007.

3. Second Interview

After the first interview, Kochheim obtained additional surveillance footage of the entrance and exit gates of the Pier Plaza parking structure from about 19:15 to 19:31 hours on March 3, 2007 (19:15 video). The recording depicted a woman moving on and around the gates to the parking structure. Kochheim believed he recognized Hendricks in the 19:15 video and that Hendricks was holding a white object up to the card scanners, causing the gates to open and let cars in and out of the parking structure. Based upon these observations, Kochheim decided to interview Hendricks again.

On May 1, 2007, Kochheim placed a Notice of Second Interview in Hendricks's work mailbox. This second notice stated that Hendricks was under investigation for misuse of the Department's parking access card on March 3, 2007 at the Pier Plaza parking structure and that Kochheim would be in charge of the interview.

Before the second interview, Kochheim provided Hendricks's representative with a copy of the audiotaped recording of the first interview, a copy of the 20:11 video and a copy of the 19:15 video. Kochheim also offered Hendricks's representative a copy of the internal affairs report up to that point in time, which included a copy of Leonardi's March 15, 2007 email to Kochheim. The representative declined, however.

Hendricks's second interview commenced on May 17, 2007 at 9:37 a.m. His representative was present at all times. Kochheim advised Hendricks of his *Miranda* and *Lybarger* rights. Kochheim also asked Hendricks if he wanted to review the internal affairs report before proceeding with the interview. Hendricks's representative said he was comfortable going forward with the interview without reviewing the report, and Hendricks replied, "No" and "I'm fine."

Hendricks identified the woman in the 19:15 video as Rinee Keldrauk (Keldrauk), one of his wedding guests. Hendricks also identified himself in the 19:15 video. He again denied having possession of a Department parking access card.

4. Third Interview

After the second interview, the internal affairs investigation was sent up the chain of command. In July 2007, Leonardi returned the investigation to Kochheim for further investigation. More specifically, Leonardi ordered Kochheim to reinterview Wisser, parking attendant Francisco Navas and Hendricks.

On August 28, 2007, Kochheim gave Hendricks notice of a third interview. Like the previous notices, the third notice apprised Hendricks that he was being investigated for misuse of City equipment, the parking access card, and that Kochheim was in charge of the interview. The notice also included the following language: "Prior to your third interview, if you need a copy of the [internal affairs] report and copies of audio tapes of interviews that have already occurred with yourself and witnesses please have your representative request them."

Before the third interview, Kochheim asked Hendricks's representative if Hendricks would need a copy of the report. The representative declined.

The third interview took place on September 5, 2007, beginning at 4:04 p.m. Kochheim read Hendricks his *Miranda* and *Lybarger* rights. Kochheim advised Hendricks that he had not received a request for a copy of the internal affairs report or an audiotape of the second interview from Hendricks or his representative. When Kochheim asked whether Hendricks was willing to proceed with the third interview without reviewing the report or listening to the tape, Hendricks responded in the affirmative.

Kochheim then showed Hendricks the 19:15 video again and asked questions about his and Keldrauk's actions at the parking gate. Hendricks again denied being in possession of the Department's parking access card on the date in question.

5. Suspension of Hendricks

On January 2, 2008, Leonardi sustained the allegations against Hendricks and imposed a one-week (40-hour) suspension. Specifically, Leonardi found that Hendricks violated Redondo Beach Civil Service Rule XVI, section 2, subsections L (misconduct), M (misuse, theft, damage or destruction of City property), U (violation of departmental rules and regulations, V (other failure of good behavior either during or outside of duty hours which is of such a nature that it causes discredit to the City or his/her employment), and X (any other just cause). Leonardi's finding under subsection M was based on Hendricks's "misuse" of City property, not "theft" of same. Leonardi also found that Hendricks violated the Department's policy manual, specifically, section 340.35, subsection (j) (wrongfully loaning, selling, giving away or appropriating any Department property for the personal use of the member or any unauthorized person) and subsection (s) (offer or acceptance of a bribe or gratuity).

On January 9, 2008, Hendricks was issued a notice of intent to suspend, and on March 6, a *Skelly*[3] hearing was held.

On March 11, 2008, Hendricks was given an amended notice of intent to suspend, in that he had objected to the original notice on the grounds it was too vague. On March 25, a second *Skelly* hearing was held before Captain Jeff Hink (Hink), who sustained the allegations against Hendricks. Hink found that (1) each *Skelly* conference did not provide sufficient information to outweigh the evidence contained in the investigation, (2) the evidence overwhelmingly supported that a parking access card assigned to the Department was used at the Pier Plaza parking gates during the periods of time that only Hendricks and Keldrauk were present next to the card reader, and (3) Hendricks's possession of a white object in his hand and his holding the object up to the card reader occurs at the same time that there was a documented use of the parking access card.

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3 *Skelly v. State Personnel Bd.* (1975) 15 Cal.3d 194.

On April 1, Hink issued a notice of discipline, sustaining the allegations against Hendricks and suspending him for one week.

6. Dishonesty Investigation & Termination of Hendricks

On January 9, 2008, internal affairs opened a new investigation, focusing on whether Hendricks lied during the parking card investigation. That same day, Kochheim gave Hendricks a notice of interview, specifying the nature of the investigation and stating that Kochheim would be in charge of the interview.

The interview took place on February 13, 2008 at 6:42 p.m. Hendricks's attorney, Ken Yuwiler (Yuwiler), was present during the interview.

On February 24, 2008, Leonardi sustained the allegations against Hendricks in the dishonesty investigation and approved his termination, which was based on findings that Hendricks violated Redondo Beach Civil Service Rule XVI, section 2, subsections F (dishonesty), L (misconduct), U (violation of departmental or City rules and regulations), V (other failure of good behavior either during or outside of duty hours which is of such a nature that it causes discredit to the City or his/her employment) and X (any other just cause). Leonardi also sustained allegations that Hendricks violated the Department's policy manual, specifically, section 340.35, subsection (cc) (false or misleading statements to a supervisor) and section 1020.6, subsection (i), requiring all employees to provide complete and truthful responses to questions asked during an interview.

On February 27, 2008, Hendricks was issued a notice of intent to terminate. At his *Skelly* hearing on June 4, Hink sustained Hendricks's termination, finding that Hendricks had failed to answer questions posed to him during interviews truthfully.

On June 5, 2008, a notice of discipline, terminating Hendricks's employment with the Department, was issued. On June 11, the notice was given to and signed by Hendricks.

7. Appeal Process

On April 14, 2008, Biggs, who had been on vacation from April 5 to April 13, 2008, received a letter dated April 7 from Yuwiler, requesting an appeal on Hendricks's behalf. Biggs called Yuwiler within a day or two. Biggs advised Yuwiler that he had received his April 7 letter and that the City was prepared to go forward with the selection of an arbitrator pursuant to the terms of the Memorandum of Understanding between the City and the Redondo Beach Police Officers Association.

In a subsequent call, Yuwiler informed Biggs that he was no longer serving as Hendricks's attorney and that Biggs would be contacted by Hendricks's new attorney to continue the process of selecting an arbitrator.

B. *Instant Action*

On March 13, 2009, Hendricks instituted this action against defendants. On June 15, 2009, he filed his first amended complaint for relief under Government Code[4] section 3300 et. seq. commonly known as the Public Safety Officers Procedural Bill of Rights Act (POBRA). Hendricks alleged that defendants "intentionally and maliciously violated" his rights under POBRA. Hendricks sought injunctive relief precluding defendants from taking disciplinary action against him and an award of damages pursuant to Code of Civil Procedure sections 1090 and 1095.

On March 4, 2010, defendants filed their motion for summary judgment. Hendricks filed his opposition on May 7.

On April 1, 2010, defendants filed a motion to compel further deposition responses from Hendricks regarding his employment history as a peace officer with the Department, as well as with another law enforcement agency, his discussion with his employee representative, the reasons why Hendricks changed legal representatives and other attorney-client communications.

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[4] All further statutory references are to the Government Code unless otherwise noted.

On April 7, 2010, the trial court issued a protective order and an order re filing of pleadings containing confidential information under seal. The order acknowledged that the parties would be required to produce sensitive, private and/or confidential information during the course of discovery, including materials or information contained in confidential peace officer files.

On April 16, 2010, Hendricks opposed defendants' motion to compel, citing Penal Code sections 832.5 through 832.8, Evidence Code sections 1043 through 1046 and the attorney-client privilege. On April 30, the trial court granted defendants' motion to compel further deposition responses and sanctioned Hendricks monetarily.

On May 21, 2010, the trial court granted defendants' motion for summary judgment, concluding, among other things, that Hendricks was notified of the general allegations against him even though he was not informed that the investigation included an allegation of petty theft and later included an allegation of untruthfulness, Hendricks need not be shown Leonardi's email and Hendricks failed to demonstrate that the City's failure to comply with the administrative appeal process constituted a violation of sections 3304 and 3304.5.

An order granting summary judgment and a judgment subsequently were filed. This appeal followed.

CONTENTIONS

Hendricks contends that defendants violated POBRA (§ 3300 et seq.) and that the trial court abused its discretion in ordering him to disclose privileged documents and communications.

DISCUSSION

Summary judgment properly is granted if there is no question of fact and the issues raised by the pleadings may be decided as a matter of law. (Code Civ. Proc.,

§ 437c, subd. (c)[5]; *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843.) To secure summary judgment, a moving defendant may show that one or more elements of the cause of action cannot be established or that there is a complete defense to the cause of action. (Code Civ. Proc., § 437c, subd. (p)(2); *Aguilar*, *supra*, at p. 849.) The defendant must "demonstrate that under no hypothesis is there a material factual issue requiring a trial." (*Rosenblum v. Safeco Ins. Co*. (2005) 126 Cal.App.4th 847, 856; accord, *Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 334.)

Once the moving defendant has met its burden, the burden shifts to the plaintiff to show that a triable issue of fact exists as to the cause of action or the defense thereto. (Code Civ. Proc., § 437c, subd. (p)(2); *Aguilar v. Atlantic Richfield Co.*, *supra,* 25 Cal.4th at p. 849.) All doubts as to the propriety of granting the motion are resolved in favor of the opposing party. (*Hamburg v. Wal-Mart Stores, Inc.* (2004) 116 Cal.App.4th 497, 502.)

On appeal, we exercise our independent judgment in determining whether there are no triable issues of material fact and the moving party thus is entitled to judgment as a matter of law. (*Wiener v. Southcoast Childcare Centers, Inc.* (2004) 32 Cal.4th 1138, 1142.) Inasmuch as the grant or denial of a motion for summary judgment strictly involves questions of law, we must reevaluate the legal significance and effect of the parties' moving and opposing papers. (*Chevron U.S.A., Inc. v. Superior Court* (1992) 4 Cal.App.4th 544, 548, disapproved on another ground in *Camargo v. Tjaarda Dairy* (2001) 25 Cal.4th 1235, 1245.)

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5 Code of Civil Procedure section 437c, subdivision (c), provides: "The motion for summary judgment shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. In determining whether the papers show that there is no triable issue as to any material fact the court shall consider all of the evidence set forth in the papers, except that to which objections have been made and sustained by the court, and all inferences reasonably deducible from the evidence, except summary judgment may not be granted by the court based on inferences reasonably deducible from the evidence, if contradicted by other inferences or evidence, which raise a triable issue as to any material fact."

The papers submitted by the parties must set forth evidentiary facts. (*Sheppard v. Morgan Keegan & Co.* (1990) 218 Cal.App.3d 61, 67; see also *Miller v. Bechtel Corp.* (1983) 33 Cal.3d 868, 874.) Mere conclusions of law or fact, without evidentiary facts to support them, are insufficient to satisfy the evidentiary requirements for a summary judgment. (*Perkins v. Howard* (1991) 232 Cal.App.3d 708, 713; *Sesma v. Cueto* (1982) 129 Cal.App.3d 108, 113.)

"Although our review of a summary judgment is de novo, it is limited to issues which have been adequately raised and supported in plaintiffs' brief." (*Reyes v. Kosha* (1998) 65 Cal.App.4th 451, 466, fn. 6.) It is a well-entrenched principle that the judgment of the trial court is presumed to be correct, and reversible error must be affirmatively demonstrated. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564; *Foust v. San Jose Construction Co., Inc.* (2011) 198 Cal.App.4th 181, 187.) This requires the appealing party to "present meaningful legal analysis supported by citations to authority and citations to facts in the record supporting the claim of error." (*In re S.C.* (2006) 138 Cal.App.4th 396, 408.) "This rule is 'designed to lighten the labors of the appellate tribunals by requiring the litigants to present their cause systematically and so arranged that those upon whom the duty devolves of ascertaining the rule of law to apply may be advised, as they read, of the exact question under consideration, instead of being compelled to extricate it from the mass.'" (*Keyes v. Bowen* (2010) 189 Cal.App.4th 647, 656.)

Hendricks first contends that defendants violated various provisions of POBRA. Under the umbrella of this contention, he maintains that his employer failed to inform him of the full nature and scope of the internal affairs investigation prior to his interrogations as required by section 3303, subdivision (c), and failed to provide him with documentation under section 3303, subdivision (g). Hendricks also claims that defendants did not comply with municipal code or other administrative appeal procedures and that defendants cannot prove their affirmative defenses.

Hendricks has waived these contentions. Although Hendricks's opening brief contains a statement of procedural history and a statement of facts, both with citations to

the record, Hendricks's legal discussion is deficient. As to Hendricks's first contention, and its various subparts, Hendricks discusses case authority in a vacuum and then sets forth numerous facts unsupported by citations to the record.

This choice of compartmentalized discussion is not at all conducive to appellate review. Just as it is not our job to search the record to find support for appellant's factual statements, it is not our job to connect the unsupported facts contained in the legal discussion with those set forth in the statement of facts.

As previously observed, our de novo review of a summary judgment "is limited to issues which have been adequately raised and supported in plaintiffs' brief." (*Reyes v. Kosha*, *supra*, 65 Cal.App.4th at p. 466, fn. 6.) Insofar as Hendricks has failed to support his first contention with adequate citations to the record, "that portion of the brief may be stricken and the argument will be deemed to have been waived." (*Moulton Niguel Water Dist. v. Colombo* (2003) 111 Cal.App.4th 1210, 1220.)

Hendricks's final contention is that the trial court abused its discretion in ordering him to disclose privileged documents and communications. He maintains that defendants were required to comply with Evidence Code sections 1043 to 1046, that he had a conditional privilege under section 3303, and that he did not have to disclose attorney-client communications.

We need not resolve these issues, in that Hendricks has failed to demonstrate that error, if any, was prejudicial. "'The burden is on the appellant in every case to show that the claimed error is prejudicial; i.e., that it has resulted in a miscarriage of justice.' [Citation.] Injury is not presumed from error, but injury must appear affirmatively upon the court's examination of the entire record. 'But our duty to examine the entire cause arises when and only when the appellant has fulfilled his duty to tender a proper prejudice argument. Because of the need to consider the particulars of the given case, rather than the type of error, the appellant bears the duty of spelling out in his brief exactly how the error caused a "miscarriage of justice."' [Citation.] . . . 'Where any error is relied on for a reversal it is not sufficient for appellant to point to the error and rest there.' [Citation.]" (*In re Marriage of McLaughlin* (2000) 82 Cal.App.4th 327, 337.)

Absent a showing by Hendricks that the errors complained of preclude a grant of summary judgment in defendants' favor, there is no basis for reversal.

DISPOSITION

The judgment is affirmed. Defendants are awarded their costs on appeal.

JACKSON, J.

We concur:

PERLUSS, P. J.

ZELON, J.